



Federal Communications Commission
Washington, D.C. 20554

JAN 29 1998

97-182

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JAN 29 1998

The Honorable Richard J. Durbin
United States Senate
364 Russell Senate Office Building
Washington, D.C. 20510

EX PARTE OR LATE FILED

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Senator Durbin:

Thank you for your letter dated December 8, 1997, on behalf of your constituent, Assistant Village Manager Barbara Adamec, of Lisle, Illinois, concerning the placement and construction of facilities for the provision of personal wireless services and radio and television broadcast services in her community. Your constituent's letter refers to issues being considered in three proceedings that are pending before the Commission. In MM Docket No. 97-182, the Commission has sought comments on a Petition for Further Notice of Proposed Rule Making filed by the National Association for Broadcasters and the Association for Maximum Service Television. In this proceeding, the petitioners ask the Commission to adopt a rule limiting the exercise of State and local zoning authority with respect to broadcast transmission facilities in order to facilitate the rapid build-out of digital television facilities, as required by the Commission's rules to fulfill Congress' mandate. In WT Docket No. 97-192, the Commission has sought comment on proposed procedures for reviewing requests for relief from State and local regulations that are alleged to impermissibly regulate the siting of personal wireless service facilities based on the environmental effects of radio frequency emissions, and related matters. Finally, in DA 96-2140 and FCC 97-264, the Commission twice sought comments on a Petition for Declaratory Ruling filed by the Cellular Telecommunications Industry Association seeking relief from certain State and local moratoria that have been imposed on the siting of commercial mobile radio service facilities.

Because all of these proceedings are still pending, we cannot comment on the merits of the issues at this time. However, I can assure you that the Commission is committed to providing a full opportunity for all interested parties to participate. The Commission has formally sought public comment in all three proceedings and, as a result, has received numerous comments from State and local governments, service providers, and the public at large. Your letter and your constituent's letter, as well as this response, will be placed in the record of all three proceedings and will be given full consideration.

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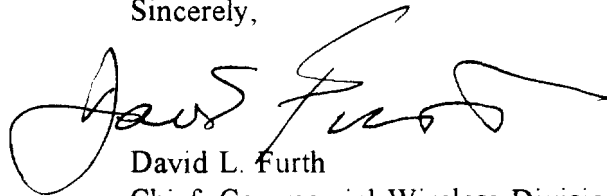
The Honorable Richard J. Durbin

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Further information regarding the Commission's policies toward personal wireless service facilities siting, including many of the comments in the two proceedings involving personal wireless service facilities, is available on the Commission's internet site at <http://www.fcc.gov/wtb/siting>.

Thank you for your inquiry.

Sincerely,

A handwritten signature in black ink, appearing to read "David L. Furth", with a large, sweeping flourish extending from the end of the name.

David L. Furth
Chief, Commercial Wireless Division
Wireless Telecommunications Bureau

RICHARD J. DURBIN
UNITED STATES SENATOR
WASHINGTON, D.C. 20510-1504

United States Senate

Washington, DC 20510-1504

December 8, 1997

WTD
97-182
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Ms. Karen Kornbluh
Acting Director
Office of Legislative Affairs
Federal Communications Commission
Room 808
1919 M Street, N.W.
Washington, DC 20554

Dear Ms. Kornbluh:

Enclosed are several letters from my constituents regarding the Federal Communications Commission's (FCC) proposed rulemakings on broadcast and cellular towers.

I would appreciate it if you would keep these individuals' concerns about zoning and land use laws in mind as you review these proposals.

Thank you for your time and attention to this matter.

Sincerely,



Richard J. Durbin
United States Senator

RJD/ks

Enc.

KS



The Arboretum Village

VILLAGE OF Lisle

"Small Enough To Be Your Neighbor. Large Enough To Serve Your Needs"

1040 Burlington Avenue

Lisle, Illinois 60532-1898

October 28, 1997

Senator Richard J. Durbin
2463 Rayburn Office Building
Washington, DC 20515

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**RE: FEDERAL COMMUNICATIONS COMMISSION PREEMPTION OF
LOCAL ZONING - CELLULAR AND BROADCAST TOWERS**

Dear Senator Durbin:

On behalf of the Village of Lisle Mayor and Board of Trustees, please accept my comments on the above captioned matter.

The Village of Lisle Mayor and Board of Trustees were elected by the residents of Lisle and are held responsible for protecting the health, safety, welfare and morals of the residents of our village. These elected officials are at the closest level of government to the people—"in the trenches" so to speak.

Over the past 3 years we have been struggling daily with new rulemakings coming from the Federal Communications Commission with respect to telecommunications. Many of those decisions have placed unfunded mandates and burdens on us, yet we have remained hopeful that new services will someday be available to our residents and businesses at more competitive prices. We also understand that the sale of airwaves to the Federal government will lessen our national debt.

The Village of Lisle is now facing an attempt by the FCC to remove additional authority from us in their current attempt to preempt local zoning of cellular telephone and broadcast towers. Both Congress and the courts have long recognized that zoning is a function of local government. Please immediately contact the FCC and tell them to stop these efforts which violate the intent of Congress, the Constitution, and principles of Federalism.

In the 1996 Telecommunications Act, Congress expressly reaffirmed local zoning authority over cellular towers. It told the FCC to stop all rulemaking where the FCC was attempting to become a Federal Zoning Commission for such towers. Despite this instruction from Congress, the FCC is now attempting to preempt local zoning authority in three different rulemakings:

1. **Cellular Towers - Radiation:** Congress expressly preserved local zoning authority over cellular towers in the 1996 Telecommunication Act with the sole exception that municipalities cannot regulate the radiation from cellular antennas if it is within limits set by the FCC. The FCC is attempting to have the "exception swallow the rule" by using the limited authority Congress gave it over cellular tower radiation to review and reverse any cellular zoning decision in the U.S. which it finds is "tainted" by radiation concerns, even if the decision is otherwise perfectly permissible. In fact, the FCC is saying that it can "second guess" what the true reasons for a municipality's decision are. They stated that the FCC need not be bound by the stated reasons given by a municipality and claim they don't need to wait until a local planning decision is final before the FCC acts.

Some of our citizens are concerned about the radiation from cellular towers. We cannot prevent citizens from mentioning their concerns in a public hearing. In its rulemaking, the FCC is saying that if any citizen raises this issue that this is sufficient basis of a cellular zoning decision to immediately be taken over by the FCC and potentially reversed, even if the municipality expressly says it is not considering such statements and the decision is completely valid on other grounds, such as the impact of the tower on property values or aesthetics.

2. **Radio/TV Towers:** The FCC's proposed rule on radio and TV towers is bad. It sets an artificial limit of 21 to 45 days for municipalities to act on any local permit (environmental, building permit, zoning or other). Any permit request is automatically deemed granted if the municipality doesn't act in this timeframe, even if the application is incomplete or clearly violated local law. And the FCC's proposed rule would prevent municipalities from considering the impacts such towers have on property values, the environment or aesthetics. Even safety requirements could be overridden by the FCC! All appeals of zoning and permit denials would go to the FCC, not to the local courts.

... This proposal is astounding when broadcast towers are some of the tallest structures known to man - over 2,000 feet tall - taller than the Empire State Building. The FCC claims these changes are needed to allow TV stations to switch to High Definition Television quickly. However, The Wall Street Journal and trade magazines state there is no way the FCC and broadcasters will meet the current schedule anyway, so there is no need to violate the rights of municipalities and their residents just to meet an artificial deadline.

The actions mentioned above represent a power grab by the FCC to become the Federal Zoning Commission for cellular towers and broadcast towers. The FCC violates the intent of Congress, the Constitution, and principles of Federalism. This is particularly true given that the FCC is a single purpose agency, with no zoning expertise, that never saw a tower it didn't like.

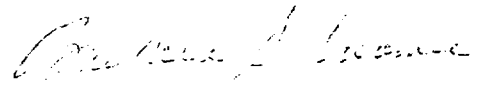
The Village of like asks you to do three things to stop the FCC:

1. Write to the new FCC Chairman William Kennard. Also write to FCC Commissioners Susan Ness, Harold Furchtgott-Roth, Michael Powell and Gloria Tristani telling them to stop this intrusion on local zoning authority in cases WT 97-197, MM Docket 97-182 and DA 96-2140.
2. Join in the "Dear Colleague Letter" currently being prepared to go to the FCC from many members of Congress.
3. Oppose any effort by Congress to grant the FCC the power to act as a "Federal Zoning Commission" and preempt local zoning authority.

Please call any or all of the following people who are familiar with the FCC's proposed rules and the depth of municipalities' objections to those rules:

- a. Barrie Tabin, National League of Cities (202) 626-3194
- b. Eileen Huggard, National Association of Telecommunications Officers and Advisors (NATOA) (703) 506-3275
- c. Robert Fogel, National Association of Counties (202) 393-6226
- d. Kevin McCarty, U.S. Conference of Mayors (202) 293-7330
- e. Cheryl Maynard, American Planning Association (202) 872-0611.

Sincerely,
VILLAGE OF LISLE



Barbara J. Adamec
Assistant Village Manager

BJA:ba/dms/ba102897

cc: Mayor & Board of Trustees
Village Manager Carl Doerr
Community Development Director Thomas Ewers
Public Works Director Ray Peterson
Peter Coblentz, Attorney
Robert Kay, Attorney